

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:28..02..2005.

CORAM

THE HON'BLE MR.MARKANDEY KATJU, CHIEF JUSTICE
and
THE HON'BLE MR.JUSTICE D.MURUGESAN

W.A.No.3622 of 2002

O.N.G.C. Madras Port Contract Employees' Union,
Rep. by its Secretary,
No.8, Venkatesapuram 2nd Street,
Ice House, Triplicane,
Chennai - 600 005.

...Appellant/
3rd Respondent

Vs.

1. The Management of Oil and Natural Gas
Corporation Ltd.,
Rep. by its Regional Director,
Southern Regional Business Centre,
No.8, Gandhi Irwin Road,
Egmore, Chennai - 600 008.

2. The Government of India,
Ministry of Labour,
Rep. by its Under Secretary,
Shram Shakti Bhavan,
Rafi Marg,
New Delhi - 110 001.

3. The Assistant Labour Commissioner (C) - II,
Ministry of Labour, Shastri Bhavan,
Haddows Road, Chennai - 600 006.

4. The Transport and Dock Workers Union,
rep. by its Secretary,
No.9, II Line Beach,
Chennai - 600 001.

5. M/s.Pandian Transport,
rep. by its Proprietor Mr.Pandian,
No.40, M.S.Koil Street,
Royapuram,
Chennai - 600 013.

..Respondents/
Petitioner and
Respondents1,2,4&5

PRAYER: Writ Appeal filed against the order of the
learned single Judge dated 19.04.2002 passed in
W.P.No.21407 of 2000, as stated therein.

For Appellant :: Mr.K.M.Ramesh

For Respondent - 1 :: Mr.Ranganatha Reddy
For M/s.King and
Patridge

Respondent No.2 :: No Appearance

J U D G M E N T

THE HON'BLE THE CHIEF JUSTICE

This writ appeal has been filed against the impugned
order of the learned single Judge dated 19.04.2002 passed in
W.P.No.21407 of 2000.

2. We have heard learned counsel for the parties, and
perused the record.

3. The writ petitioner (1st respondent in this Writ
Appeal) had filed the writ petition praying for quashing of
the order of the first respondent therein (Union of India)
dated 17.11.1999, and the corrigendum dated 13.10.2000. By the

order dated 17.11.99 the following reference had been made by the Central Government under Sections 10(1) and 10(2-A) of the Industrial Disputes Act, 1947 to the Industrial Tribunal, Chennai referring the following matter to the Tribunal.

"Whether the demand of ONGC Madras Port Contract Employees Union for regularization of 42 contract labourers listed in Annexure 'A' is justified? If so, to what relief the workmen are entitled?"

4. The subsequent corrigendum dated 13.10.2000 states:-

"In this Ministry's order of even number dated 17.11.1999, in the schedule thereof, the number of contract workman appearing in second sentence may be read as 54."

5. The writ petitioner (1st respondent in this writ appeal) is a public sector corporation. In the course of its business it made an attempt to discover oil and natural gas in the sea near Chennai. By January 1995 it was found that no oil or natural gas was available at Chennai, and hence the exploration activities were wound up. During the exploration activities the petitioner had to transport material and other supplies from on-shore to off-shore. For this purpose a contract for stevedoring, shipping services, loading and unloading of materials and transport of materials, etc., was entered into between the petitioner and the 5th respondent in the writ petition, M/s.Pandian Transports, and for executing this contract M/s.Pandian Transports had engaged dock workers who are covered by the Dock Workers (Regulation of Employment) Act, 1948. This contract between the writ petitioner and M/s.Pandian Transports was for a period of one year commencing from 18.09.1994. The contract was terminated w.e.f.04.01.1995.

6. The 4th respondent in the writ petition namely., the Transport and Dock Workers Union raised demands in respect of wages payable to them. It may be mentioned that M/s.Pandian Transport had entered into a settlement under Section 18(1) of the Industrial Disputes Act on 29.08.1994 with the aforesaid 4th respondent-Union. On the termination of the contract between the petitioner and the 5th respondent, the said Union made a demand on the 5th respondent for payment of earned wages for the month of December, 1994 and 3 days in January, 1995

i.e., upto 3.1.1995. Thereafter, the petitioner received a copy of the communication dated 29.05.1995 by the 4th respondent addressed to the 5th respondent stating that the 5th respondent had paid all the dues to the workers including the earned wages for the period from 10.09.1994 to 03.01.1995, but the PF amount for the period 01.12.1994 to 03.01.1995 remained unpaid. This was however settled by the 5th respondent on 24.05.1996. Thus, it is alleged that all the claims of the personnel had been fully settled by 1996.

7. The 4th respondent-Union sought to raise an industrial dispute with respect to revision of wages of the workmen of the 5th respondent, and the petitioner-Corporation was also impleaded as a party in the conciliation proceedings. The petitioner-Corporation took the stand in conciliation proceedings that there was no privity of contract between the petitioner-Corporation and the members of the 4th respondent - Union, and the members of the 4th respondent were employees of the contractor (the 5th respondent) and not of the petitioner. According to the petitioner-Corporation, it had no control over the said contract labour (the members of the 4th respondent), and the consideration for the said contract was on the basis of the tonnage of the material lifted and not on the basis of the personnel engaged. The Assistant Labour Commissioner sent his failure of conciliation report on 30.01.1995. Thereafter, on 19.09.1995 the first respondent passed an order specifically stating that the dispute was not fit for adjudication, as the workmen were never employed by ONGC, but were employed by various contractors, and hence no dispute existed against the petitioner-Corporation for their employment.

8. It may be mentioned that after the termination of the contract between the petitioner-Corporation and the 5th respondent on 03.01.1995 and settlement of accounts between them, the petitioner-Corporation directed the 5th respondent transport to clear certain materials of the petitioner-Corporation lying in the godown within Madras Harbour precincts in respect of which the earlier contract was validated for a period of three months with effect from 03.09.1996. In respect of this work, the 5th respondent had entered into a Memorandum of Understanding on 27.06.1996 with the 4th respondent for carrying out the said work on a consolidated sum of Rs.2 lakhs per month without any claim for P.F., bonus, kits, liveries, etc., The said work was completed

and the 5th respondent settled the account with the 4th respondent.

9. It is alleged that long after the termination of the contract as aforesaid the personnel engaged by the 5th respondent, who were then members of the 4th respondent -Union, formed another Union under the name and style of ONGC Madras Port Employees Union, the 3rd respondent in the writ petition. The petitioner-Corporation alleged that this was done with a view to make unlawful demand and for illegal enrichment of some people. The 3rd respondent-Union tried to raise an industrial dispute and sent a communication dated 21.08.1997 to the Regional Labour Commissioner, Chennai stating that the petitioner-Corporation had without any rhyme or reason terminated the contract with the 5th respondent under which their members were engaged and all of a sudden they had been rendered jobless. The Assistant Labour Commissioner (C) held that there was failure of conciliation stating that ONGC earlier awarded contract for shipping, stevedoring services, etc., on need basis. However, the 1st respondent-Central Government passed the impugned order dated 17.11.1999 referring the dispute on 42 workmen to the Industrial Tribunal, Chennai, which was revised later by a corrigendum dated 13.10.2000 increasing the number of contract labourers to 54.

10. The main submission of the petitioner-Corporation before the learned single Judge was that the Central Government had not applied its mind before passing the impugned reference order, particularly since it had earlier refused to make a reference. It was alleged that the impugned reference order was passed mechanically without due application of mind, and was arbitrary and illegal.

11. It is true that there is no absolute bar in making a reference order after an earlier reference had been refused by the Central Government; vide *Avon Services (Production Agencies) Private Limited Vs. Industrial Tribunal, 1979 (I) LLJ*. This is because the decision to make or not to make a reference is an administrative decision and not a quasi-judicial decision, vide *State of Madras Vs. C.P.Sarathy, 1953 (I) LLJ 174*.

12. In *Western India Match Company Ltd., Vs. Their Workmen, 1970 (II) LLJ 256 = 1973 (2) LLN 357* the Supreme Court observed

"In the light of the nature of the function of the Government and the object for which the power is conferred on it, it would be difficult to hold that once the Government has refused to refer, it cannot change its mind on a reconsideration of the matter either because new facts have come to light or because it had misunderstood the existing facts or for any other relevant consideration and decide to make the reference. But where it reconsiders its earlier decision it can make the reference only if the dispute is an industrial one and either exists at that stage or is apprehended and the reference it makes must be with regard to that and no other industrial dispute".

13. In *Binny Limited Vs. Their Workmen*, 1972 (I) LLJ 47 the facts were that the Government had declined twice to make a reference of the dispute, and hence the subsequent reference was challenged as invalid. The Supreme Court rejected this contention holding that merely because on two previous occasions the Government had declined to make a reference would not entail the Court to conclude that there is no subsequent cause for reference at a later date.

14. In *Ram Avtar Sharma and Another Vs. State of Haryana and Another*, 1985 (II) LLJ 187 the Supreme Court reiterated that while exercising the power of making a reference under Section 10(1) of the Industrial Disputes Act the Appropriate Government performs an administrative act and not a judicial or quasi-judicial act. Being an administrative function the Appropriate Government cannot delve into the merits of the dispute and determine the lis. Under Section 10 of the Industrial Disputes Act the Appropriate Government is to be satisfied that an Industrial Dispute exists or is apprehended and this may permit the Government to determine prima facie whether an industrial dispute exists or the claim is frivolous or bogus or put-forth for extraneous and irrelevant reasons and not for industrial peace and harmony.

15. However, in the same decision in *Ram Avtar Sharma's Case* (supra) the Supreme Court also observed (vide para-6): -

"every administrative determination must be based on grounds relevant and germane to the exercise of power. If the administrative determination is based on irrelevant, extraneous or

grounds not germane to the exercise of power it is liable to be questioned in exercise of the power of judicial review".

16. In *State of Bombay Vs. K.P.Krishnan & Others*, 1960 (II) LLJ 592 it was held that a writ of mandamus would lie against the Government if the order passed by it under Section 10(1) of the Industrial Disputes Act is based or induced by reasons as given by the Government which are extraneous, irrelevant and not germane to the determination. In such a situation the Court would be justified in issuing a writ of mandamus even in respect of an administrative order. May be the Court may not issue a writ of mandamus directing the Government to make a reference, but the Court can after examining the reasons given by the appropriate Government for refusing to make a reference come to a conclusion that they are irrelevant, extraneous or not germane to the determination and then can direct the Government to reconsider the matter.

17. Thus, in view of the aforesaid observations of the Supreme Court in *Ram Avtar Sharma's Case* (supra) it has to be held that there is a limited power of judicial review of the administrative order under Section 10(1) of the Industrial Disputes Act for making or refusing to make a reference, and it cannot be said that the writ court is totally shut out from interfering with an order making or refusing to make a reference under Section 10(1) of the Industrial Disputes Act.

18. In *Sultan Singh Vs. State of Haryana*, 1996 (2) SCC 66 the Supreme Court observed that since an order making reference under Section 10(1) of the Industrial Disputes Act is an administrative order, no opportunity of hearing need be given to the employer before passing the reference order even if earlier reference had been refused, and no reasons need be recorded.

19. The learned counsel for the appellant submitted that as held by the Supreme Court in *Avon Services Case* (supra) it is not absolutely necessary that there ought to be some fresh material before the Government for reconsideration of its earlier decision (refusing to make a reference). The Government may reconsider its decision on account of some new facts brought to its notice or for any other relevant consideration and such other relevant consideration may include the threat to industrial peace by the continued

existence of the industrial dispute without any attempt at resolving it and that a reference would at least bring the parties to the talking table.

20. The learned counsel for the appellant also relied on the decision of the *Sultan Singh's Case (supra)* wherein it was observed (vide para-4): -

"Sub-Section (5) of Section 12 of the Industrial Disputes Act does not enjoin the Appropriate Government to record reasons for making reference under Section 10(1). It enjoins to record reasons only when it refuses to make a reference".

21. We agree with the learned counsel for the appellant that no opportunity of hearing need be given to the employer nor reasons recorded in the reference order even if earlier reference had been refused, and no fresh material is required for making a reference as held in *Avon Services Case (supra)*.

22. However, the law is now well settled that even an administrative order is subject to judicial review, though on much more limited grounds than a quasi-judicial order. In other words, the grounds for challenging an administrative order are much narrower than the grounds available for challenging a quasi-judicial order. However, it cannot be said that an administrative order can never be challenged at all.

23. The law in England earlier was that only a judicial or quasi-judicial order was subject to judicial review, but an administrative order was not subject to judicial review. However, subsequently after the historical decision of the House of Lords in the *Wednesbury Case (infra)* the law was changed, and it became accepted that even an administrative order is subject to judicial review, though on certain limited grounds.

24. To quote the classic passage from the judgment of Lord Greene M.R. in *Associated Provincial Picture House Ltd., Vs. Wednesbury Corporation, 1947 (2) All E.R. 680:-*

"It is true the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the

things that must not be done. For instance, a person entrusted with the discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority."

25. In the Constitutional Bench decision in *Bikas Chatterjee Vs. Union of India and Others*, 2004(7) SCC 634 the Supreme Court observed that even the decision of the President of India on a petition under Article 72 of the Constitution of India is open to judicial review, but on very limited grounds.

26. In the same Constitutional Bench decision (supra) reliance was placed on the Division Bench decision of the Supreme Court in *Satpal Vs. State of Haryana*, 2000 (5) SCC 170 where the grounds of judicial review were stated as follows:-

"(i) the Governor exercising the power under Article 161 himself without being advised by the Government; or (ii) the Governor transgressing his jurisdiction; or (iii) the Governor passing the order without application of mind; or (iv) the Governor's decision is based on some extraneous consideration; or (v) mala fides."

27. When even the decision of the President of India under a Constitutional provision is subject to judicial review (though on very limited grounds) there can be no doubt that the decision of the Central Government under Section 10 of the Industrial Disputes Act will also be subject to judicial review, though again on very limited grounds. Hence there is no total exclusion of judicial review against such a decision. One of the grounds given for judicial review in *Satpal's* case (supra) is non-application of mind before taking the decision or reliance on some extraneous considerations. (the Wednesbury Principle)

28. As long back as in 1891 the House of Lords was called upon to consider the scope of some of the provisions of the Licensing Act, 1872 which gave discretion to the Magistrates

in granting certain licenses. The question for decision was as to the nature of the discretion granted. Lord Halsbury L.C. speaking for the House observed in *Susannah Sharp Vs. Wakefield*, 1891 AC 173 at p.179:

" 'discretion' means when it is said that something is to be done within the discretion of the authorities that that something is to be done according to the rules of reason and justice, not according to private opinion: *Rooke's Case*, according to law, and not humour. It is to be, not arbitrary, vague and fanciful, but legal and regular".

29. In *Padfield Vs. Minister of Agriculture, Fisheries and Food*, 1968 (1) All E.R. 604 the facts were that the appellants in that appeal made a complaint to the Minister of Agriculture, Fisheries and Food, United Kingdom under Section 19(3) of the Agricultural Marketing Act, 1958 asking that the complaint be referred to the committee of investigation established under that enactment. The Minister refused to refer the complaint to the committee of investigation, and his decision was challenged in Court. The House of Lords held that "Where a statute conferring a discretion on a Minister to exercise or not to exercise a power did not expressly limit or define the extent of his discretion and did not require him to give reasons for declining to exercise the power, his discretion might nevertheless be limited to the extent that it must not be so used, whether by reason of misconstruction of the statute or other reason, as to frustrate the object of the statute which conferred it, and although the Minister had full or unfettered discretion under Section 19(3) of the Agricultural Marketing Act, 1958, he was bound to exercise it lawfully viz., not to mis-direct himself in law, nor to take into account irrelevant matters, nor to omit relevant matters from consideration".

30. In the same decision Lord Upjohn observed:-

"My Lords, on the basic principles of law to be applied there was no real difference of opinion, the great question being how they should be applied to this case. The Minister in exercising his powers and duties conferred on him by statute can only be controlled by a prerogative order which will only issue if he acts unlawfully. Unlawful behaviour by the Minister may be stated with sufficient accuracy

for the purposes of the present appeal (and here I adopt the classification of Lord Parker C.J. in the divisional court): (a) by an outright refusal to consider a relevant matter; or (b) by mis-directing himself in point of law, or (c) by taking into account some wholly irrelevant or extraneous consideration; or (d) by wholly omitting to take into account a relevant consideration. There is ample authority for these propositions which were not challenged in argument. In practice they merge into one another and ultimately it becomes a question whether for one reason or another the Minister has acted unlawfully in the sense of misdirecting himself in law, that is, not merely in respect of some point of law but by failing to observe the other headings which I have mentioned".

31. The above view of the House of Lords was followed by the Supreme Court in *Rohtas Industries Ltd., Vs. S.D. Agarwal*, AIR 1969 SC 707 (vide paragraphs 30 to 35).

32. Thus, it is well settled that on certain limited grounds administrative orders are subject to judicial review. As observed by the Supreme Court in *State of Orissa v. Gokulananda Jena*, (2003) 6 SCC 465 (vide para-6): -

" It is to be noted that an administrative order is amenable to the writ jurisdiction under Article 226 of the Constitution of India"

33. As observed by the Supreme Court in *Tata Cellular v. Union of India*, AIR 1996 SC 11, in proceedings and decisions taken in administrative matters, the scope of judicial review is confined to the decision making process and does not extend to the merits of the decision taken. In the present case, there is definite infirmity in the decision making process, which led to the impugned reference order. That infirmity was that the Central Government did not take into account the objections raised by the writ petitioner before making the reference. Hence, the decision was vitiated not because of infirmity in the merits of the decision, but because of the infirmity in the decision making process.

34. In *Indian Railway Construction Company Ltd. v. Ajay Kumar*, (2003) 4 SCC 579, the Supreme Court observed (vide para-14): -

" If the power has been exercised on non-consideration or non-application of mind to relevant factors, the exercise of power will be regarded as manifestly erroneous"

35. As regard reference orders under Section 10(1) of the Industrial Disputes Act, the Supreme Court in *National Engineering Industries Ltd. Vs. State of Rajasthan and Others*, 2000 (1) SCC 371 observed (vide paragraph-24) :-

"It will be thus seen that the High Court has jurisdiction to entertain a writ petition when there is an allegation that there is no industrial dispute and none apprehended which could be the subject-matter of reference for adjudication to the Industrial Tribunal under Section 10 of the Act. Here it is a question of jurisdiction of the Industrial Tribunal, which could be examined by the High Court in its writ jurisdiction. It is the existence of an Industrial Dispute, which would clothe the appropriate Government with power to make the reference and the Industrial Tribunal to adjudicate it. If there is no industrial dispute in existence or apprehended the appropriate Government lacks power to make any reference". (Emphasis supplied)

36. Similarly, in *Bongaigaon Refinery & Petrochemicals Ltd. Vs. Samiuddin Ahmed*, 2001 (9) SCC 557 the facts were that the appellant-company had challenged an order of reference under Section 10(1) of the Industrial Disputes Act by filing a writ petition in the High Court. The learned single Judge held that the reference was entirely mis-conceived inasmuch as the employment given to the respondent was obtained on concealment of material facts, and hence withdrawn. Inasmuch as the respondent never joined the employment of the appellant the question of making a reference to test the validity of termination of service of the respondent did not arise. Hence, the reference order dated 2.6.1995 was quashed. The respondent filed a writ appeal which was allowed and against that order the appeal was filed before the Supreme Court.

37. The Supreme Court allowed the appeal holding that the documentary evidence filed on behalf of the appellant clearly went to show that the respondent had never entered into the employment of the appellant. He was offered an employment under a special scheme whereunder employment was available only subject to satisfying certain eligibility conditions. The respondent made a material concealment of facts and tried to secure an employment to which he was not entitled under the scheme. Such material concealment was detected timely and therefore his joining report was not accepted by the competent authority of the appellant-Company and the same was turned down. Inasmuch as the respondent had not entered the employment of the appellant, referring a dispute under Section 10 of the Industrial Disputes Act based on the assumption that the respondent had entered the service of the appellant and was then removed from service, suffered from material infirmity and was therefore vitiated. The Supreme Court further observed that the Division Bench of the High Court was not right in forming an opinion that the controversy raised by the appellant should have been left to be adjudicated upon by the Industrial Tribunal. This decision also supports the view that a reference order under Section 10 can be challenged on certain limited grounds.

38. We therefore have to see the facts of the present case for deciding whether the view taken by the learned single Judge was correct.

39. The stand of the writ petitioner-Corporation before the learned single Judge was that the impugned order was arbitrary and had been passed in a mechanical manner presuming that there was a dispute between the petitioner and the employees concerned, although the 1st respondent - Central Government on an earlier occasion held that the workmen in the reference were not the employees of the petitioner - Corporation, and hence there was no dispute as such between the workmen and the petitioner. The Central Government failed to note that on the previous occasion on 19.11.1995 it was found that the workmen concerned were never employed by the petitioner-Corporation and no industrial dispute existed between them and the petitioner. It had not adverted to the agreement between the petitioner and its contractor - respondent-5. The workmen concerned procured the reference illegally and by playing fraud on the 1st respondent- Central Government by suppressing the material facts with respect to

the contract between the 3rd respondent and the 5th respondent evidenced from the Memorandum of Understanding dated 27.06.1996.

40. The stand of the 3rd respondent in the writ petition was that it is a trade union representing the contract workmen employed at Madras Harbour for the operations of the writ petitioner. It was alleged that the workmen represented by the said Union were originally members of the 4th respondent - Union. In 1995 the members of the 3rd respondent-Union resigned from the 4th respondent Union and during the end of 1996 they formed the 3rd respondent-Union. It is alleged that the members of the 3rd respondent -Union had been employed for more than 16 years for port handling work by the writ petitioner - Corporation through various contractors. It is alleged that though the writ petitioner (ONGC) had been changing its contractor frequently, the members of the 3rd respondent-Union had continued to be employed during the work of the writ petitioner - Corporation without any break, since they were involved in work of a permanent and perennial nature. The writ petitioner - Corporation ought to have employed the said members of the 3rd respondent - Union directly as its workmen instead of engaging them through contractors. Hence, it was alleged that the engagement of the members of the 3rd respondent Union through intermediary contractors was illegal, unjust and sham and nominal. It was alleged that only the officials of the writ petitioner - Corporation directly supervised and extracted work from the members of the 3rd respondent union. The contractors had no role to play excepting its name and paying their monthly wages. The erstwhile 4th respondent union raised an industrial dispute regarding a charter of demands and the said conciliation ended in failure on 31.01.1995. Consequently, the members of the 3rd respondent Union gave notice of strike and struck work from 04.01.1995. It was alleged that the writ petitioner - Corporation instead of negotiating and settling the dispute across the table, took the extreme step of terminating the contract itself with the 5th respondent M/s.Pandian Transport in order to thwart the demand of the 3rd respondent union. On termination of the contract the members of the 3rd respondent Union were thrown out of employment and lost even the status of contract workmen. It was alleged that the members of the 3rd respondent Union were not aware as to when the Ministry of Labour passed its earlier order declining the reference. It was alleged that the power of the appropriate Government is

not a judicial power but only administrative in nature, and hence there is no question of finality.

41. The facts leading to the filing of the writ petition as stated in paragraphs - 16 and 17 of the impugned order of the learned single Judge are as follows:-

"Para-16. On 29.08.1994 there was a Memorandum of Settlement under Section 18(1) of the Industrial Disputes Act between M/s.Pandian Transport, the fifth respondent herein, and its labourers represented by the Union General Secretary, Joint Secretary and three Committee Members. It was agreed that all demands of the Union and the workmen had been fully discussed and the Union had decided to drop all the demands other than were referred to in the agreement. The Union had also agreed not to indulge in any strike during the currency of the settlement and not to raise any fresh demands. The agreement was to be in force with effect from 10.08.1994 to 28.02.1996. On the same day there was a Memorandum of Settlement under Section 18(1) of the Industrial Disputes Act between both the respondents and its supervisory staff. On 28.09.1994 there was a contract entered into between the writ petitioner and the 5th respondent. That related to removal of certain materials of the petitioner lying in the godown within the Madras harbour precincts, in respect of which the earlier contract was validated for a period of three months with effect from 03.09.1996. There was a Memorandum of Understanding entered into on 27.05.1996 between the 4th and the 5th respondents for carrying out the said work on a consolidated sum of Rs.2 lakhs without any claim towards PPF, PF, bonus, kits, liveries, etc., It would appear that the 5th respondent executed the work and settled the account with the 4th respondent union. In the meantime, the 4th respondent raised an industrial dispute with respect to revision of wages for the workmen of the 5th respondent also impleading the petitioner. Conciliation proceedings were held. The petitioner participated and stated that it had absolutely no privity of contract with the member of the 4th respondent Union, that the contract between the petitioner and the 5th respondent was a wholesome contract with respect to stevedoring,

shipping services, loading and unloading of materials, transport of materials, etc., The petitioner had no control over the said contract work. The consideration for the said contract on the basis of the tonnage of the material lifted and not on the personnel engaged. The Assistant Labour Commissioner sent his report on 30.01.1995. On 19.09.1995 the 1st respondent passed an order stating that the dispute was not fit for adjudication, as the workmen were not employed by ONGC, but were employed by various contractors. No industrial disputes existed against the petitioner being the employer and the members of the 4th respondent Union. This, according to the petitioner's Counsel, became final in 1995. On 21.05.1996 the 4th respondent addressed a letter to the 5th respondent that all dues had been settled except the provident Fund from December 1994 to 3.1.1995. The amount claimed was also paid by the 5th respondent. There was a Memorandum of Understanding entered into between the 4th and the 5th respondents on 07.05.1996. This, as already noted, related to the balance work left. Para-17. It would appear that on 21.08.1997 the 3rd respondent herein addressed a letter to the Regional Labour Commissioner, Shastri Bhavan, Madras stating that the petitioner had terminated the contract with the 5th respondent under which the 3rd respondent's members were engaged and that all of a sudden, they had been rendered jobless. The communication was forwarded to the 2nd respondent herein. The petitioner made its objections by communication dated 25.02.1997 stating that earlier the 4th respondent raised a dispute, which was conciliated by the 2nd respondent and it ended in failure on 31.05.1995. The 2nd respondent sent his failure report. The 1st respondent, however, passed the impugned order dated 17.11.1999 stating that industrial disputes existed between the management of the petitioner and its workmen in respect of whether the demand of ONGC Madras Port Trust Contract Employees Union for regularization of 42 contract labourers listed in Annexure-A is justified and if so to what relief the workmen are entitled to and a corrigendum was issued on 13.10.2000 giving the number of workmen as 54 instead of 42."

42. The learned single Judge in paragraph - 18 of his order observed that the elaborate objections filed by the writ petitioner on 21.11.1997 appear not to have been considered at all by the 1st respondent before making the impugned reference order. We agree with the view taken by the learned single Judge that on the facts of the case it was incumbent upon the Central Government to take into account the detailed objection filed by the writ petitioner in the conciliation proceedings before deciding whether to make or not to make a reference under Section 10 of the Industrial Disputes Act.

43. No doubt, if after considering the said objection filed by the writ petitioner on 21.11.1997 the Central Government still decided that it was a fit case for making a reference under Section 10 of the Industrial Disputes Act to the Industrial Tribunal it could have been done so, but it could not have ignored the said objections as it appears to have been done.

44. It may be mentioned that in the affidavit filed in support of the writ petition the petitioner had stated in paragraph - 4 as follows:-

"Para-4:- Thereafter, Transport and Dock Workers Union sent to the petitioner a copy of the communication dated 29.05.1995 addressed to M/s.Pandian Transports stating that M/s.Pandian Transports had paid all the dues to the workers including the earned wages for the period from 10.08.1994 to 03.01.1995 but the P.F. amount for the period from 01.12.1994 to 03.01.1995 remains unpaid. The P.F. contribution for the said period had also been paid by M/s.Pandian Transports on 24.05.1996. Thus, all the claims of the personnel engaged by M/s.Pandian Transports had been fully settled and that they have also received all the benefits including provident fund even in the year 1996."

45. In the same affidavit of the writ petitioner it was stated in paragraph - 5

"In the meantime, M/s. Transport and Dock Workers Union raised an Industrial Dispute with respect to revision of wages of the workman of M/s.Pandian Transports also impleading the petitioner. The Assistant Labour Commissioner (C)

Chennai held conciliation proceedings. The petitioner in the said conciliation proceedings opposed the claim of the said union more particularly stating that there is absolutely no privity of contract between the members of the said Union and ONGC and that the contract between the petitioner and M/s.Pandian Transports is a wholesome contract with respect to stevedoring, shipping services, loading and unloading of materials, transport of materials, etc. The petitioner had no control over the said contracted work and that the consideration for the said contract was on the basis of the tonnage of the material lifted and not on the basis of the personnel engaged. The Assistant Labour Commissioner (C) thereupon sent his failure of conciliation report on 30.01.1995. Considering the said report the first respondent passed an order on 19.09.1995 in Ref.No.L-20012/9/95-I RCO-III specifically stating that the dispute is not fit for adjudication for the following reasons:-

The workmen were never employed by ONGC but were employed by various contractors. No Industrial Dispute therefore exists against M/s.O.N.G.C. Ltd. for their employment". The said order has become final."

46. Thus, it was the clear stand of the writ petitioner that the workmen concerned were never employed by the petitioner-Corporation but were employed by various contractors, and moreover all the dues had been settled. Hence, no industrial dispute existed between ONGC Limited and the said workmen.

47. In our opinion, it was therefore incumbent upon the Central Government to have atleast recorded a prima facie finding whether the workmen concerned were employees of the writ petitioner or only employees of the contractor, and whether the claim of the workmen concerned had already been settled. The writ petitioner had raised specific objections to this effect before the Assistant Labour Commissioner in conciliation proceedings. In our opinion these objections were certainly relevant in deciding whether to make a reference or not, but it appears that they were not taken into consideration. In our opinion the Central Government has not complied with the dicta of the Supreme Court in *National*

Engineering Industries v. State of Rajasthan (supra) and Bangaigaon Refinery & Petrochemicals Ltd. v. Samijuddin Ahmed (supra), and hence the reference order is vitiated.

48. As observed in the decisions referred to above, even for taking an administrative decision the authority concerned must apply his mind to the relevant considerations and the relevant materials before it. In this case, the Central Government should have at least applied its mind to the objections raised by the writ petitioner namely., that workmen concerned were not the workmen of the writ petitioner but that of the contractor and moreover the claims of the workmen were already settled. The writ petitioner had specifically alleged that the petitioner was not the direct employer of the workers concerned at any point of time, and this contention had been accepted earlier. No doubt, it is not necessary that there should be some fresh facts for changing its opinion but nevertheless it was incumbent upon the Central Government to have applied its mind to the objections of the writ petitioner that the workmen concerned were not its employees but the employees of the contractor. If the employees concerned were not the employees of the writ petitioner obviously there was no dispute between them could be referred for adjudication. Also, if the claims of the workmen concerned had already been settled there was no dispute which could be referred. The learned single Judge has only remitted the matter to the Central Government for a fresh consideration and we see nothing objectionable or illegal in this direction.

49. The position may have been different if the learned single Judge had merely quashed the impugned reference order, and left it at that. But he has left it open to the Central Government to make a fresh reference if after considering the writ petitioner's objection it decides to do so if it is prima facie satisfied that the workmen concerned are the writ petitioner's workmen, and their claims are not settled.

50. There is no force in this writ appeal, and accordingly the same is dismissed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sm

Copy to:-

1. The Regional Director,
Management of Oil and Natural Gas
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No.8, Gandhi Irwin Road,
Egmore, Chennai - 600 008.
2. The Under Secretary,
The Government of India,
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3. The Assistant Labour Commissioner (C) - II,
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Haddows Road, Chennai - 600 006.

+1cc to Mr.K.M.Ramesh, Advocate SR.No.9180

+1cc to M/S King and Patridge, Advocates SR.No.9450

NG(CO)

kaa 09.03.05

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Judgment in W.A.No.3622 of 2002

28.02.2005